



NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2022-0155]

Insider Mitigation Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 5.77, "Insider Mitigation Program," to provide licensees and applicants with agency approved guidance for complying with NRC regulations. RG 5.77 applies to nuclear power reactors that contain protected or vital areas. Licensees should use defense-in-depth methodologies to minimize the potential for an insider to adversely affect, either directly or indirectly, the licensee's capability to prevent significant core damage or spent fuel sabotage.

DATES: Revision 1 of RG 5.77 is available on September 8, 2022.

ADDRESSES: Please refer to Docket ID **NRC-2022-0155** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2022-0155**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the "For Further Information Contact" section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please

contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 1 of RG 5.77 and the regulatory analysis may be found in ADAMS under Accession Nos. ML16342B024 and ML14002A294, respectively.

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FOR FURTHER INFORMATION CONTACT: Mark Resner, telephone: 301-287-3680, email: Mark.Resner@nrc.gov or Brad Baxter, telephone: 301-287-3615, email: Brad.Baxter@nrc.gov, both are staff of the Office of Nuclear Security and Incident Response; and Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301-415-1699, email: Mekonen.Bayssie@nrc.gov. All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

The proposed Revision 1 of RG 5.77 was issued with a temporary identification number of draft Regulatory Guide (DG) 5044. On January 4, 2016, the NRC sent an email (ML16007A565) transmitting the DG for comment to cleared stakeholders who demonstrated a need-to-know and possessed the required access clearance. The stakeholders' comment period closed on March 4, 2016. Stakeholders' comments on DG-5044 and the staff responses to the public comments are available under ADAMS Accession No. ML22152A224.

II. Additional Information

The NRC did not announce the availability of the draft RG for public comment because the guide was originally marked as containing information designated as "Official Use Only-Security Related Information." The Commission directed the NRC staff to edit the document for consistency, accuracy, formatting, and a determination regarding which content should be marked "Unclassified" and "Official Use Only – Security Related Information" in accordance with Staff Requirement Memorandum (SRM) - SECY-17-0095—Review and Approval of Proposed Revision to RG 5.77, "Insider Mitigation Program," dated July 14, 2021 (ADAMS Accession No. ML21195A356). The staff critically examined the designation of the document and determined it should not be designated as "Official Use Only—Security Related Information." In consideration of the stakeholders' comments and the SRM, the staff revised the document and is issuing this notice to inform the public of the issuance of the final RG.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Revision 1 of RG 5.77 describes methods acceptable to the NRC staff for complying with the NRC's regulations to meet the regulatory requirements in paragraphs

73.55(b)(9) and 73.55(b)(9)(ii) of title 10 of the *Code of Federal Regulations* (10 CFR), such that a licensee shall establish, maintain, and implement an Insider Mitigation Program (IMP) and shall describe the program in the Physical Security Plan. The IMP must contain elements from the following licensee programs: access authorization, fitness-for-duty, cyber security, and physical protection. Issuance of this RG, would not constitute backfitting as defined in 10 CFR 50.109, "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests," constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, "Licenses, certifications, and approvals for nuclear power plants." As explained in RG 5.77, applicants and licensees would not be required to comply with the positions set forth in RG 5.77.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the "Regulatory Guide" series.

Dated: August 30, 2022.

For the Nuclear Regulatory Commission.

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